

REMARKS

Claims 1, 3-10, 13-19 and 22-32 are in the application. Claims 2, 11, 12, 20 and 21 have been canceled. Claims 1, 3-6, 8, 10, 18, 19, 23, 24 and 30 have been amended. Claims 31 and 32 are newly presented and supported by FIG. 7B and the description thereof. No new matter has been added.

Claim 1 has been amended to contain the limitations of former claims 2, 11 and 12. Further support for the amendment is found at page 10, lines 14-18. Claims 23 and 24 have been amended as supported at page 10, lines 14-18. Claims 19 and 30 have been amended to contain limitations of former claim 21. Accordingly, no new matter has been added.

Claims 1-5, 11-13, 19, 23-26 and 30 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Yu, of record. This rejection is respectfully traversed. Yu discloses a microfistula tube that is implantable to shunt an aqueous fluid from the anterior chamber into Schlemm's canal, the subconjunctival space or the episcleral vein; or from the vitreal cavity to the subarachnoid space of the optic nerve. The microfistula tube itself includes a soluble duct that is coated with biological cells or an intracellular matrix and a basement membrane. The tube is made of a mouldable material such as gelatin or collagen, but is sufficiently rigid to maintain its shape. The tube is inserted into the eye using a surgical instrument that includes an outer tube for penetrating body tissues, an inner tube and an innermost rod. Yu does not disclose the use at the distal end of the instrument of a beacon tip to guide the instrument to an ocular vein by visualization of the tip. Yu also does not disclose the implantation through the surgical instrument into the eye of a material that is space-maintaining within the tract created by the surgical instrument and which is changeable *in situ* from a first configuration to a second configuration within the tract. Since the microfistula tube in Yu is mouldable and/or made of an absorbable material such as gelatin or collagen, Yu's microfistula tube is not taught to be made of a metal such as nickel titanium alloy that is changeable *in situ* from a first configuration to a second configuration. Accordingly, the features of the present claims are not disclosed in Yu and withdrawal of this rejection is respectfully requested.

Claims 6-10, 14-18, 20-22 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu. This rejection is respectfully traversed. The examiner states that these claims are directed to allegedly minor modifications that are well known in the art. However, firstly, it is pointed out that the amended claims are not anticipated by Yu, therefore there is no *prima facie* case presented by reliance on Yu. Furthermore, Yu discloses a surgical delivery instrument for the microfistula tube that is delivered by inserting a sharp pointed instrument to form a tissue tract.

There is no disclosure of using energy ablation at the tip of the surgical instrument nor any disclosure on providing optical or other medical imaging to guide the surgical instrument. There is no disclosure in Yu of inserting a space-maintaining material other than a solid microfistula tube. It is therefore submitted that a *prima facie* case is not provided by disclosure of Yu, but also that there are features not disclosed in Yu recited in the present dependent claims which would not be obvious to combine with Yu in that there is no suggestion in Yu for such modifications. It is submitted that one of ordinary skill in the art would not find any need to modify the surgical instruments or shunts of Yu since the surgical piercing tool as disclosed by Yu would appear to be adequate. For the foregoing reasons, it is submitted that the claims are unobvious over Yu and withdrawal of this rejection is respectfully requested.

For the foregoing reasons, it is submitted that the application is in condition for allowance and a prompt passage to issuance is respectfully requested. Should the examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Applicants hereby petition for any further extension of time that may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this amendment is to be charged to Deposit Account No. 504480 (Order No. ISSCP003).

Respectfully submitted,
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